

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

RAFAEL MARTINEZ,

*Defendant.*

**Protective Order**

**22 Cr. 251 (LJL)**

Upon the application of the United States of America, with the consent of the undersigned counsel, the Court hereby finds and orders as follows:

**Confidential Material.** The Government will make disclosure to the defendants of documents, objects, and information, including electronically stored information (“ESI”), pursuant to Federal Rule of Criminal Procedure 16, 18 U.S.C. § 3500, and the Government’s general obligation to produce exculpatory and impeachment material in a criminal case. Certain of that discovery may include material that (i) affects the privacy and confidentiality of individuals; (ii) would impede, if prematurely disclosed, the Government’s ongoing investigation of uncharged individuals; (iii) would risk prejudicial pretrial publicity if publicly disseminated; and/or (iv) is not authorized to be disclosed to the public or disclosed beyond that which is necessary for the defense of this criminal case. Discovery materials produced by the Government to the defendant or their counsel that are either (1) designated in whole or in part as “Confidential” by the Government in emails or communications to defense counsel, or (2) that include a Bates or other label stating “Confidential,” shall be deemed “Confidential Material.”

**Sensitive Material.** Certain discovery materials in this case may raise a heightened risk to the privacy and confidentiality of individuals or to an ongoing investigation of uncharged individuals. Discovery materials produced by the Government to the defendant or their counsel

that are either (1) designated in whole or in part as “Sensitive” by the Government in emails or communications to defense counsel, or (2) that include a Bates or other label stating “Sensitive,” shall be deemed “Sensitive Material.”

**NOW, THEREFORE, FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED:**

1. Confidential Material shall not be disclosed by the defendant or defense counsel, including any successor counsel (the “defense”) other than as set forth herein, and shall be used by the defense solely for purposes of defending this action. The defense shall not post any Confidential Material on any Internet site or network site to which persons other than the parties hereto have access, and shall not disclose any Confidential Material to the media or any third party except as set forth below.

2. Confidential Material may be disclosed by counsel to the following persons (“Designated Persons”):

- a) Personnel for whose conduct counsel is responsible, *i.e.*, personnel employed by or retained by counsel, as needed for purposes of defending this action;
- b) Prospective witnesses for purposes of defending this action;
- c) The defendant; and
- d) Such other persons as hereafter may be authorized by the Court.

3. The restrictions on Sensitive Material are the same as Confidential Material, except that Sensitive Material may only be disclosed to the defendant for review at the offices of defense counsel, or in the presence of defense counsel or any member of the defense team (*e.g.*, attorneys, experts, consultants, paralegals, investigators, support personnel, and secretarial staff involved in the representation of the defendant in this case), for purposes related to this case. The defendant shall not maintain, retain, or keep copies of any records containing Sensitive Material outside of

the offices or presence of defense counsel. Sensitive Material may otherwise be disclosed to Designated Persons consistent with the terms of Confidential Material.

4. The Government may authorize, in writing, disclosure of Confidential Material or Sensitive Material beyond that otherwise permitted by this Order without further Order of this Court.

5. This Order does not prevent the disclosure of any Confidential Material or Sensitive Material in any hearing or trial held in this action, or to any judge or magistrate judge, for purposes of this action. All filings should comply with the privacy protection provisions of Fed. R. Crim. P. 49.1.

6. This Order places no restriction on a defendant's use or disclosure of ESI that originally belonged to the defendant.

7. Except for such material that has been made part of the record of this case, the defense shall return to the Government or securely destroy or delete all Confidential Material and Sensitive Material within 30 days of the expiration of the period for direct appeal from any verdict in the above-captioned case; the period of direct appeal from any order dismissing any of the charges in the above-captioned case; or the granting of any motion made on behalf of the Government dismissing any charges in the above-captioned case, whichever date is later. To the extent this paragraph conflicts with the New York Code of Professional Responsibility or attorneys' obligations to clients regarding file retention, however, the ethical rules govern.

8. The defense shall provide a copy of this Order to prospective witnesses and persons retained by counsel to whom the defense has disclosed Confidential Material or Sensitive Material. All such persons shall be subject to the terms of this Order. Defense counsel shall maintain a

record of what Confidential Material or Sensitive Material has been disclosed to which such persons.

*[Remainder of page intentionally left blank]*

### Retention of Jurisdiction

9. The provisions of this order shall not terminate at the conclusion of this criminal prosecution and the Court will retain jurisdiction to enforce this Order following termination of the case.

AGREED AND CONSENTED TO:

DAMIAN WILLIAMS  
United States Attorney

by: /s/ Micah Fergenson  
Micah Fergenson  
Assistant United States Attorney

Date: June 8, 2022

/s/ Telemachus Kasulis  
Elkan Abramowitz, Esq.  
Randall Jackson, Esq.  
Telemachus Kasulis, Esq.  
Michael Schachter, Esq.  
Counsel for Rafael Martinez

Date: June 8, 2022

SO ORDERED:

Dated: New York, New York  
June 9, 2022



HONORABLE LEWIS J. LIMAN  
UNITED STATES DISTRICT JUDGE